



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 6455399

Date: JAN. 10, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a gospel musician, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for EB-2 classification and a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of*

established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

To qualify as a member of the professions holding an advanced degree, a petitioner must show that his occupation meets the definition of a profession, and that he holds a qualifying advanced degree. With respect to his occupation meeting the definition of a profession, section 101(a)(32) of the Act does not include musicians in the list of professions, and the Petitioner has not established that a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into his occupation.

Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

Additionally, in order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B). Here, although the Petitioner contends that he received a Bachelor of Arts degree from the University of [redacted] in Nigeria (2010), he did not submit evidence of this degree. Nor did he provide an academic credential evaluation to establish the aforementioned degree’s equivalency to a U.S. baccalaureate degree as required under 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner also maintains that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled two of the regulatory criteria: membership at 8 C.F.R. § 204.5(k)(3)(ii)(E) and recognition for achievements at 8 C.F.R. § 204.5(k)(3)(ii)(F). On appeal, the Petitioner argues that he meets two additional criteria: ten years of full-time experience at 8 C.F.R. § 204.5(k)(3)(ii)(B) and salary at 8 C.F.R. § 204.5(k)(3)(ii)(D).

We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner meets the requirements of at least three criteria. Although the record reflects that the Petitioner received multiple [redacted] awards at the [redacted] Music Video Awards, satisfying the recognition for achievements criterion, for the reasons discussed below, we do not concur with the Director’s decision relating to the membership criterion. In addition, as explained below, the Petitioner has not demonstrated that he fulfills the ten years of full-time experience and salary criteria.

1. Evidentiary Criteria

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

The record contains a recommendation letter from [redacted] president of [redacted] [redacted], a record label in Nigeria, asserting that the Petitioner “has been working for [redacted] for more than a decade in the capacity of a recording artist, song writer, music composer, music director, voice coach and executive producer.” [redacted]’s letter further states: “The [redacted] gospel band is a five man group formed in the year 2000 and was duly registered as a limited liability company in 2004. [The Petitioner] formerly became a Board Member in 2004, he has served as the Music Director between 2004-2008. [The Petitioner] has doubled as the Executive Secretary of the company since 2010.” The Director found this letter was insufficient to demonstrate that the Petitioner has at least ten years of full-time experience because it was “vague and only provides the years and not specific dates or time frames.”

With the appeal, the Petitioner provides a second recommendation letter from [] listing specific recording, production, and music release dates relating to the Petitioner's work with []. This letter indicates that the Petitioner "took a time to pursue other interests until 2013," but did not indicate when that time period commenced. Furthermore, the aforementioned recommendation letters do not offer sufficient detail as to whether the Petitioner's work experience for [] was full-time. Without more specific information from the Petitioner's employer, his evidence does not meet this criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner submitted two emails from [] Bank informing [] of credit transactions relating to its bank account. In addition, he provided two invoices that [] presented to [] and [] in Nigeria.

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of his claimed exceptional ability relative to others working in the field.⁴ The aforementioned credit transactions and invoices relate to [] rather than the Petitioner's specific earnings. The record does not include evidence of his "salary" or "remuneration for services" in Nigeria or the United States. Here, the Petitioner has not offered documentation showing that his earnings are indicative of exceptional ability relative to others performing similar services in the field. Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

The record includes a letter from the president of the Performing Musicians Employers' Association of Nigeria (PMEAN) identifying the Petitioner as a member. The Director found that this evidence satisfied this criterion. For the reasons outlined below, the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that he meets this criterion, and the Director's determination on this issue will be withdrawn.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation." The aforementioned letter from PMEAN's president discusses the Petitioner's musical talent and accomplishments, but does not indicate that PMEAN's membership body is comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that PMEAN otherwise constitutes a professional association. Accordingly, the Petitioner has not established that he meets this criterion.

For the reasons set forth above, the Petitioner has not shown that he meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii).

⁴ See USCIS Policy Memorandum PM-602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; *Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 21* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

2. Comparable evidence

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) allows for the submission of “comparable evidence” if the above standards “do not readily apply to the beneficiary’s occupation.” A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. 204.5(k)(3)(ii) as well as why the evidence he has submitted is “comparable” to that required under 8 C.F.R. 204.5(k)(3)(ii).⁵

On appeal, the Petitioner contends that the totality of the evidence shows:

[H]e squarely meets the statutory requirements through the comparable evidence submitted. [The Petitioner] submitted credible evidence of his statu[r]e as an artist with over ten years of experience; that he has been widely recognized in this field with numerous performances, recordings and videos through the press and by his peers for his notoriety; and that he has commanded compensation which demonstrates exceptional ability.

With respect to the Petitioner’s years of experience, compensation, and recognition in the field, both our decision and the Director’s decision discussed this evidence under the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (D), and (F). Here, the Petitioner has not demonstrated that the standards at 8 C.F.R. § 204.5(k)(3)(ii) are not readily applicable to his occupation.⁶ He has not sufficiently explained why he has not submitted evidence that would satisfy at least three of the six regulatory criteria. As such, the Petitioner has not shown that he may rely on comparable evidence.

In summary, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) or meets the comparable evidence requirements at 8 C.F.R. § 204.5(k)(3)(iii), and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. The Director determined that the Petitioner had not met any of three prongs set forth in the Dhanasar analytical framework.

Regarding the Petitioner’s claim of eligibility under Dhanasar’s first prong, he indicated that he intends “to take the Eclectic African Gospel far and wide [in] the U.S.A., pushing the frontier and making more American[s] discover the lovely sound of Africa music, especially when used to praise God.” The Petitioner further stated that his proposed endeavor involves “the upliftment of all people and strengthening of ties between African and American peoples. I intend to build on my network of clients in the USA, mainly churches, Christian organizations, individual[s], and social organization[s] of African extract.” In addition, the Petitioner asserts that his proposed undertaking stands to “contribute to the demand for rich trans-cultural music performance while expanding our reach to people and organizations

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 22.

⁶ “General assertions that any of the six objective criteria described in 8 CFR 204.5(k)(3)(ii) do not readily apply to the alien’s occupation are not probative and should be discounted.” See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 22.

throughout North America. . . . I intend to seek opportunities in the USA to discover new talents in a way that will benefit both lands and get them on track for a successful music career.” We agree with the Director that the Petitioner’s proposed endeavor aimed at promoting African indigenous music and eclectic gospel music has substantial merit.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to promote a valuable cultural art form in the United States, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his network of Christian and social organizations to impact U.S. cultural interests or our country’s music industry more broadly at a level commensurate with national importance.

Furthermore, while the Petitioner asserted that bringing his music to the United States “will lead to net economic benefit to the country,” he has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of

discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.